



FOIP FOLIO

SEASONAL BEST WISHES FROM THE OIPC



All of us at the OIPC extend our best wishes to our readers. 2008 has ended in a tumultuous, confusing and uncertain fashion. Never has there been a better

time to take some time off to reflect on how fortunate we are to have family and friends. Enjoy those relationships. Enjoy your Christmas vacation. Best wishes for 2009.

WOW! THANKS TO THE AUSTRALIAN LAW REFORM COMMISSION

The Australian Law Reform Commission has produced an amazing three volume report on *Australian Privacy Law and Practice*. The breadth (2667 pages - 74 subheadings) and the quality of this document is very impressive. It addresses developing technology, inconsistency and fragmentation, cross-border data flows, data breach notification, credit reporting, health service, health information and the functions and

role of the Privacy Commissioner.

This is an important contribution to the study of privacy with plenty of material that legislators in Saskatchewan and other jurisdictions ought to consider as they contemplate legislative reform in their respective jurisdictions. The report is accessible at <http://www.alrc.gov.au/media/2008/mr11108.html>.



SHOULD YOU BE COLLECTING DRIVER'S LICENCE INFORMATION?

Joint guidelines have been released by the Privacy Commissioner of Canada and her colleagues in Alberta and British Columbia. This provides guidance to retailers in determining whether it is appropriate to collect or record drivers' licence numbers. We know, from calls to our office, that this is a widespread practice in Saskatchewan that involves some Crown

corporations and many private sector businesses. One key message is that generally, photocopying or scanning a licence is excessive and improper. You can view the guidelines applicable to the Saskatchewan private sector at http://www.privcom.gc.ca/information/pub/guide_edl_e.asp.

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ADMINISTRATIVE TRIBUNALS AND PRIVACY—A FEDERAL PERSPECTIVE

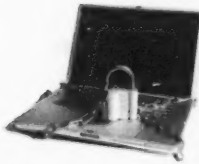
In the Annual Report of the Privacy Commissioner of Canada (PCC), **Jennifer Stoddart** discusses a number of complaints concerning the publication of personal information on the Internet. She discusses concerns identified by her office in the investigation of those reports. The PCC recommends the following:

- Reasonably depersonalize future decisions that will be posted on the Internet through the use of randomly assigned initials in place of individuals' names; or post only a summary of the decision with no identifying personal information.
- Observe suggested guidelines respecting the exercise of discretion to disclose personal information in any case where an institution proposes to disclose personal information in decisions in electronic form on the Internet.

- Remove decisions that form the basis of the complaints to the PCC from the Internet on a priority basis until they can be reasonably depersonalized through the use of randomly assigned initials and re-posted in compliance with the *Privacy Act*.
- Restrict the indexing by name of past decisions by global search engines through the use of an appropriate "web robot exclusion protocol;" or remove from or reasonably depersonalize all past decisions on the Internet through the use of randomly assigned initials, within a reasonable amount of time.

The PCC Annual Report is available at http://www.privcom.gc.ca/atip/ar/2007-2008/ar_200708_pa_e.asp.

CIBC DATA BREACH



According to the federal Privacy Commissioner, Jennifer Stoddart, close to half a million people will likely never know whether their personal information was compromised in a data breach at the Canadian Imperial Bank of Commerce. The Commissioner began investigating after the bank informed her about the disappearance of a hard drive containing the personal information and financial data of some 400,000 clients of Talvest Mutual Funds, which was at that time associated with CIBC Mutual Funds. CIBC was transferring Talvest files from Montreal to its Toronto-area computing centre in December 2006. CIBC decided to copy the files onto two identical disk drives with one to be sent by air

and one by land. The land-shipped package was opened and found to be empty. The missing disk drive has not turned up. The Commissioner's office has stated that "it is impossible to be certain of [whether the package was empty all along] because CIBC's computer systems didn't track whether, when, and by whom copies of data onto portable storage devices were made." Details can be found in PIPEDA Case Summary #395, available online at http://www.privcom.gc.ca/cf-dc/2008/395_20080925_e.asp.



RIGHT TO KNOW COALITION SUCCEEDS IN SUPREME COURT OF NOVA SCOTIA



Congratulations to **Darce Fardy**, President of the 'Right to Know Coalition of Nova Scotia'. The Supreme Court of Nova Scotia held that regional development authorities are subject to the province's *Freedom*

of Information Act. Consequently, those authorities cannot withhold information from the public unless they can demonstrate a legitimate exemption under that Act. The Coalition was an intervener in the case. For more information see www.nsrighhtoknow.ca.

ALBERTA COMMISSIONER CONCERNED ABOUT AMENDMENTS TO HEALTH INFORMATION ACT



On December 1, 2008 Alberta's Information and Privacy Commissioner, **Frank Work**, identified concerns with a number of proposed amendments to Alberta's *Health Information Act*.

Commissioner Work's concerns included:

- A custodian (equivalent to a Saskatchewan "trustee") will no longer be required to consider a patient's wishes about the exchange of health information via Alberta Netcare.
- The law will allow for the creation of "health information repositories" for research purposes. There are concerns related to the use of health information in these repositories, how the

repositories will be regulated and what oversight there will be.

- The Minister can require custodians to make health information available via Alberta Netcare, and can do so without submitting a privacy impact assessment to the Commissioner.

The Commissioner's news release stated that the amendment "will remove the last measure of control individual's have over their health information." This can be found at <http://www.oipc.ab.ca/home/DetailsPage.cfm?ID=3854>.

ALBERTA HEALTH REGION MODELS GOOD SECURITY PRACTICES

A senior Portfolio Officer in the Alberta Information and Privacy Commissioner Office has recently reviewed the circumstances surrounding the theft of a laptop containing health information from the Two Hills Health Centre in that province. Notwithstanding the theft, Portfolio Officer **Leahann McElveen** observed that:

- The laptop hard drive was encrypted;
- The laptop was protected by reasonable physical safeguards;

- Users had received appropriate education with respect to privacy requirements;
- A privacy impact assessment had been undertaken and completed.

In the circumstances of this investigation, the Portfolio Officer agreed that notification of the breach to each of the affected individuals would serve no practical purpose. Investigation Report H2008-IR-003 (East Central Health) is available at <http://www.oipc.ab.ca/home/DetailsPage.cfm?ID=3804>.

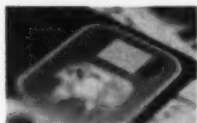


CANADA BORDER SERVICES AGENCY CANCELS PLAN TO SHARE DATABASE WITH U.S. HOMELAND SECURITY

Some positive news for the end of 2008: the Canada Border Services Agency (CBSA) has now cancelled plans to share its database of holders of enhanced drivers' licences with the U.S. Department of Homeland Security. Although it has responded to the concern that there would be transfers of bulk information, the information will still be accessed by Homeland

Security when someone holding such an enhanced licence crosses the border into the U.S. and their license is "pinged" at the border. Our office is studying the initiative of Saskatchewan Government Insurance (SGI) to introduce the enhanced driver's licence in Saskatchewan. We anticipate issuing our public report early in 2009.

ENHANCED DRIVER'S LICENSE IN ONTARIO



The Ontario Information and Privacy Commissioner has undertaken discussions with the Radio Frequency Identification industry to develop a prototype RFID-enabled card that has an on/off switch for the RFID chip. This has arisen from the recent consideration and commentary by the Ontario

Commissioner, **Ann Cavoukian**, concerning the enhanced driver's licences that will be issued now in Ontario for purposes of land travel to the United States. A Backgrounder on this issue is available at <http://www.ipc.on.ca/index.asp?navid=67&fid1=96>.

USEFUL LESSONS FROM AUDIT OF CANADA'S PASSPORT SYSTEM

The recent audit report of the Privacy Commissioner of Canada identified a number of privacy concerns in the operations of the passport operations of Passport Canada. Likely, the FOIP Coordinators in all government institutions in Saskatchewan could benefit from a review of the problems found in the passport office and recommendations for improvement to protect the

privacy of Canadians applying for passports. The December 2008 Privacy Audit of Canadian Passport Operations can be found at http://www.privcom.gc.ca/information/pub/ar-vr/pc_20081204_e.asp.

B.C. OIPC CONCERNED ABOUT NEW VIDEO SURVEILLANCE INITIATIVE

In response to a recent announcement of new provincial funding to Vancouver, Surrey and Kelowna for Closed Circuit Television (CCTV) video surveillance, Commissioner **David Loukidelis** has issued an open letter. The Commissioner highlights the unsuccessful experience with CCTV in the UK and other jurisdictions. He stressed that CCTV should be

used only as a last resort. This open letter from the B.C. Commissioner is available at [http://www.oipc.bc.ca/pdfs/public/F08-36501_AG_SG_Letter\(CCTV\)\(4Nov08\).pdf](http://www.oipc.bc.ca/pdfs/public/F08-36501_AG_SG_Letter(CCTV)(4Nov08).pdf).





MORE ON CHILDREN'S PRIVACY



The Public Interest Advocacy Centre (PIAC) recently released a report entitled, "All in the Data Family: Children's Privacy Online". It is based on qualitative research

performed with volunteers aged 11-17 in a controlled computer laboratory environment in Toronto. The volunteers engaged in Internet activities of their choice, which were monitored and tracked by the researchers.

"All in the Data Family" reviews the privacy risks children unwittingly encounter when they use the internet; in particular the paper looks at the risks posed to children when they join or use websites that are designed to be online playgrounds. The report finds that children's websites overwhelmingly expose the private information of users without their informed consent or the consent of a parent or guardian.

The report concludes that "the current legislative privacy framework in Canada and the important effect of limited privacy laws in the United States (from where most websites are either based or draw their privacy standards) is inadequate to protect children's online privacy to a standard that is appropriate." As a result, the report suggests the amendment of Personal Information Protection and Electronic Documents Act (PIPEDA) in order to incorporate several rules regarding the online collection of data of children up to the age of 18.

First, and most significant of the report's proposed amendments, is a prohibition of the collection, use, and disclosure of the personal

information of children under the age of 13 in Canada.

Second, for teens aged 13-15, the report suggests the consent of the teen and the explicit consent of a parent should be required before websites are permitted to collect and use personal information of the child and should not be permitted to disclose that personal information.

Third, for teens aged 16 to the legal age of majority (18 or 19), the report proposes that websites should only be permitted to collect and use personal information with the consent of the teen. The report goes on to suggest that disclosure of the personal information of the teen only be allowed with the opt-in consent of the teen and explicit consent of a parent.

Finally, the report suggests that once children reach the age of legal majority, websites that have collected and used personal information should not be permitted to retain the information gathered during the child's minority years, and should be required to remove the information immediately. Websites would be able to retain and use the information if the now adult person granted their explicit consent for this to occur. More information is available at http://www.piac.ca/privacy/children_s_privacy_threatened_by_play_website_s_and_social_networking/.



FUTURE EVENTS

January 19-20, 2009 - Privacy Compliance Conference 2009 – Calgary, AB
(visit <https://www.canadianinstitute.com/Home.htm> for more details)

February 3, 2009 - 10th Annual Privacy and Security Conference – Victoria, BC
(visit <http://www.rebootconference.com/privacy2009/> for more details)

February 9, 2009 - CBA Privacy & Access Law South Section Meeting - Topic: "Identity Theft" - Regina, Saskatchewan, Hotel Saskatchewan at 12:00 pm (to register call the CBA at 306-244-3898)

February 10, 2009 - CBA Privacy & Access Law North Section Meeting - Topic: "Identity Theft" - Saskatoon, Saskatchewan, Saskatoon Club at 12:00 pm (to register call the CBA at 306-244-3898)

March 10, 2009 - CBA Privacy & Access Law South Section Meeting - Topic: "Electronic Health Records" - Regina, Saskatchewan, Hotel Saskatchewan at 12:00 pm (to register call the CBA at 306-244-3898)

March 9, 2009 - CBA Privacy & Access Law North Section Meeting - Topic: "Electronic Health Records" - Saskatoon, Saskatchewan, Saskatoon Club at 12:00 pm (to register call the CBA at 306-244-3898)

April 4-8, 2009 - HIMSS09 Annual Conference and Exhibition – Chicago, Illinois
(visit <http://www.himssconference.org/docs/HIMSS09MINIbrochure.pdf> for more details)

May 31-June 3, 2009 - e-Health 2009: Leadership in Action – Quebec City, Quebec
(visit <http://www.e-healthconference.com/> for more details)

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